IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9220 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHRAQUEKHAN NOORMOHAMMADKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9220 of 2002

MR RAMNANDAN SINGH for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 28.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat

Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference of four criminal cases, which are pending against the petitioner under the Arms Act. It is alleged against the petitioner that, he is a headstrong person and is keeping arms for the purpose of disturbing the peace. The particulars of the activities of the petitioner are given in the detention order. The authority, after having been satisfied about the alleged activities of the petitioner, has detained him by way of preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that even though the petitioner was in judicial custody at the relevant time, yet the detention order is passed against him. It is submitted that, at the relevant time when the detention order is passed, the petitioner was already in judicial custody in connection with one of the cases. It is submitted that the petitioner was released on bail in three cases, however, he was still in judicial custody in connection with the fourth case. It is submitted that the authority has not stated as to why it is still necessary to detain the petitioner even though he is in judicial custody. For that purpose, learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 6 and 7 observed as under.:

> "4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on

record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxxxx xxxxxx xxxxxxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

xxxxx xxxxx xxxxx"

#. Mr.Patel, learned AGP, however, tried to justify the detention order even though the petitioner is in judicial custody. In the instant case, the detaining authority has stated in the order that the petitioner is in

judicial custody and that he may be released on bail at any point of time. However, the detaining authority has not stated as to on what material it has reached the conclusion that the petitioner may be released on bail. Even, there is nothing to suggest that any bail application was also pending at the instance of the petitioner. The authority has not stated that since the petitioner was released on bail in three cases, he may accordingly be released in the fourth case also. The authority was required to state as to on what basis the authority has reached the said conclusion that the petitioner may be released on bail in connection with the last case, even though, admittedly, he was in judicial custody at the relevant time in connection with the said case. In that view of the matter and in view of the judgment of the Apex Court, as referred above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 28.7.2002 is quashed and set aside. The detenu Ishraqekhan Noormohammadkhan Pathan is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)